

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Firm ID 11-2671938
Pres. Date: 2/16/16 9:30 a.m.

-----X
In Re:

Chapter 7

JOHN N. KUMP,

Case No.: 13-72968 (AST)

Debtor.
-----X

NOTICE OF PRESENTMENT OF OBJECTION TO CLAIM

SIR/MADAM:

PLEASE TAKE NOTICE that an order will be presented for signature before the Honorable Alan S. Trust, United States Bankruptcy Judge, in his courtroom 960, United States Bankruptcy Court, Long Island Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722, on **February 16, 2016 @ 9:30 a.m.** The proposed order will seek an order reducing the claim as specifically set forth in the application annexed and in compliance with Bankruptcy Rule 3007, together with such other and further relief as this court deems just and proper.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed Order must be in writing and filed with the Clerk of the Court, United States Bankruptcy Court, Eastern District of New York, 290 Federal Plaza, Central Islip, New York, 11722, (a)(i) through the Bankruptcy Court's electronic filing system (in accordance with General Order M-242), which may be accessed (with a password which is available by contacting the Bankruptcy Court's technical assistance at 631-712-6200, Monday through Friday, 8:30 a.m. to 5:00 p.m.) through the Internet at the Bankruptcy Court's website: www.nyeb.uscourts.gov using Netscape Navigator software version 3.0 or higher, and (ii) in portable document format (PDF) using Adobe Exchange software for conversion; or (b) if a party is unable to file electronically, such party shall submit the objection in PDF format on a diskette in an envelope with the case name, case number, type and title of document, document number of the document to which the

objection refers, and the file name on the outside of the envelope; or (c) if a party is unable to file electronically or use PDF format, such party shall submit the objection on a diskette in either Word, WordPerfect, or DOS text (ASC II) format. An objection filed by a party with no legal representation shall comply with section (b) or (c) as set forth in this paragraph. A hard copy of the objection, whether filed pursuant to section (a), (b), or (c), as set forth in this paragraph, shall be hand-delivered directly to the Chambers of the Honorable Alan S. Trust, and served so as to be received by Macco & Stern, LLP., 2950 Express Drive South, Suite 109, Islandia, New York 11749, Attn: Cooper J. Macco, Esq. no later than **February 9, 2016 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE that if no objections are received the Court may enter an order granting the relief sought without further notice or hearing. In the event that objections are timely received by the Court, the Court will schedule a hearing to consider the objections at a date and time to be determined by the Court.

PLEASE TAKE FURTHER NOTICE that in the event that timely objections are filed the Court shall conduct a hearing on a date to be determined by the Court.

Dated: Islandia, New York
January 14, 2016


MACCO & STERN, LLP.
Attorneys for the Debtors

By: _____
MICHAEL J. MACCO
2950 Express Drive South, Suite 109
Islandia, NY 11749
(631) 549-7900

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----- X
In re:

Case No. 13-72968 (AST)

JOHN N. KUMP,

Chapter 7

Debtor
----- X

DEBTOR'S OBJECTION TO ALLOWANCE OF CLAIM

John N. Kump (the "Debtor"), the above-referenced debtor, by and through its counsel, Macco & Stern, LLP, hereby moves the Court for an order reducing the proof of claim assigned claim number 1 (the "Claim") filed by the Interval Revenue Service (the "Claimant"), and respectfully sets forth as follows:

JURISDICTION

1. The Court has jurisdiction to consider this motion under 28 U.S.C. §§157 and 1334. This is a core proceeding under 28 U.S.C. §157(b). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for relief are §502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007.1 of the Local Bankruptcy Rules for the Eastern District of New York (the "Local Rules").

BACKGROUND

2. On May 31, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code.

3. On August 2, 2013, Claimant filed the Claim in the amount of \$249,706.34 as follows: (1) \$26,658 as a secured tax claim (the "Secured Portion"); (2) \$75,879.91 as a priority tax claim (the "Priority Portion"); and (3) \$147,167.83 as a general unsecured claim (the "Unsecured Portion"). A copy of the Claim is annexed hereto as **Exhibit A**.

4. The Secured Portion of the Claim arises from a civil penalty for the 2003 payroll tax.

5. The Priority Portion of the Claim arises from the Debtor's failure to file returns for the years 2004, 2005, 2006, 2007, 2008 and 2009.

6. The Unsecured Portion of the Claim arises from the Debtor's failure to file tax returns for the years 2010, 2011, and 2012.

OBJECTION

7. Pursuant to Bankruptcy Code §502(b):

[I]f . . . an objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that –

(1) Such claim is unenforceable against the debtor and property of the debtor under any agreement or applicable law for a reason other than such claim is contingent or unliquidated . . .

8. Bankruptcy Code §506 states, in relevant part, that “[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of such creditor's interest in the estate's interest in such property . . . and an unsecured claim to the extent that the value . . . is less than the amount of such allowed claim”

9. Additionally, pursuant to Bankruptcy Rule 3007(a), “[a]n objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . at least 30 days prior to the hearing.”

10. The Debtor objects to the allowance of the Priority Portion and Unsecured Portion of the Claim, and believes the Claim should be reduced to the amount of the Secured Portion only.

11. On or about February 7, 2014, the Debtor prepared and filed the tax returns associated with the Priority Portion and Unsecured Portion of the Claim (the "Tax Returns").

12. Thereafter, Debtor forwarded to the Claimant a copy of all Tax Returns.

13. However, the Tax Returns did not show up on the Internal Revenue Electronic Tax Administration Docket.

14. On or about October 5, 2015, Debtor filed duplicate copies of the Tax Returns.


15. Based on the Tax Returns, the Claim should be reduced to the amount of the Secured Portion of the Claim.

16. Accordingly, the Debtor respectfully requests that the Court enter and order reducing the Claim to a secured claim in the amount of \$26,658.60 plus interest, the amount of the Secured Portion of the Claim.

17. No previous application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests the Court enter an order disallowing, or alternatively, reclassifying, the Claim and granting such further and different relief as the Court deems just and proper.

Dated: January __, 2016
Islandia, New York


MACCO & STERN, LLP
Attorneys for the Debtor

By: _____

Michael J. Macco
A Member of the Firm
2950 Express Drive South, Suite 109
Islandia, New York 11749
(631) 549-7900

EXHIBIT A

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor: JOHN N. KUMP		Case Number: 8-13-72968-AST
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service Name and address where notices should be sent: Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101-7346 Telephone number: 1-800-973-0424 email: _____ Creditor Number: 8051927		COURT USE ONLY
Name and address where payment should be sent (if different from above): Internal Revenue Service P.O. Box 7317 Philadelphia, PA 19101-7317 Telephone Number: 1-800-973-0424 email: _____		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: <i>(If known)</i> Filed on: _____
1. Amount of Claim as of Date Case Filed: \$ <u>249,706.34</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Taxes</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: <u>See Attachment</u>	3a. Debtor may have scheduled account as: <u>(See instruction #3a)</u>	3b. Uniform Claim Identifier (optional): <u>(See instruction #3b)</u>
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <i>*All of debtor(s) right, title and interest to property - 26 U.S.C. §6321</i>		Amount of arrearage and other charges, as of the time case filed, included in secured claim, if any: <u>\$ 26,658.60</u>
Value of Property: \$ _____ Annual Interest Rate <u>3</u> % <input type="checkbox"/> fixed or <input checked="" type="checkbox"/> variable (when case was filed)		Basis for perfection: <u>See Attachment</u> Amount of Secured Claim: <u>\$ 26,658.60</u> Amount Unsecured: <u>\$ 147,167.83</u>
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5). Amount entitled to priority: <u>\$ 75,879.91</u>
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7).	<input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)(____).
<i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B10 (Official Form 10) (4/13)

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7. Documents: Attach are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "**redacted**".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☒ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorsor, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print name: CATHLEEN RODRIGUEZ

Title: Bankruptcy Specialist

Company: Internal Revenue Service

/s/ CATHLEEN RODRIGUEZ

08/01/2013

(Signature)

(Date)

Address and telephone number (if different from notice address above):

Internal Revenue Service
2 Metrotech Center 6th floor
100 Myrtle Avenue
Brooklyn, NY 11201

Telephone number: (718) 834-3571

Email:

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

In the Matter of: JOHN N. KUMP
334 PECONIC AVE
MEDFORD, NY 11763

Case Number
8-13-72968-ASTType of Bankruptcy Case
CHAPTER 7ADate of Petition
05/31/2013

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date Office Location
XXX-XX-9494	CIVIL PEN	12/31/2003	12/18/2006	\$18,975.70	\$80.00	\$7,602.90	09/09/2008 Suffolk County

Total Amount of Secured Claims: \$26,658.60**Unsecured Priority Claims** under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9494	INCOME	12/31/2010	1 Unassessed-No Return	\$4,017.00	\$284.28
XXX-XX-9494	INCOME	12/31/2011	2 NOT FILED	\$500.00	\$50.00
XXX-XX-9494	INCOME	12/31/2012	1 Unassessed-No Return	\$70,760.60	\$268.03
				\$75,277.60	\$602.31

Total Amount of Unsecured Priority Claims: \$75,879.91**Unsecured General Claims**

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9494	INCOME	12/31/2004	1 Unassessed-No Return	\$7,200.00	\$3,759.56
XXX-XX-9494	INCOME	12/31/2005	1 Unassessed-No Return	\$4,155.60	\$1,769.53
XXX-XX-9494	INCOME	12/31/2006	1 Unassessed-No Return	\$70,760.60	\$22,568.56
XXX-XX-9494	INCOME	12/31/2007	1 Unassessed-No Return	\$7,600.00	\$1,682.56
XXX-XX-9494	INCOME	12/31/2008	1 Unassessed-No Return	\$2,400.00	\$377.01
XXX-XX-9494	INCOME	12/31/2009	2 NOT FILED	\$500.00	\$50.00
				\$92,616.20	\$30,207.22

Penalty to date of petition on unsecured priority claims (including interest thereon) \$1,263.26

Penalty to date of petition on unsecured general claims (including interest thereon) \$23,081.15

Total Amount of Unsecured General Claims: \$147,167.83

1 UNASSESSED TAX LIABILITY(IES) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED

2 THE ABOVE LIABILITY HAS BEEN LISTED AS A POTENTIAL LIABILITY FOR THE DEBTOR BECAUSE THE RETURN HAS NOT BEEN FILED. AS SOON AS THE DEBTOR FILES THE RETURN WITH THE IRS AS REQUIRED BY LAW THIS CLAIM WILL BE ADJUSTED TO REFLECT THE ASSESSED LIABILITY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----- X
In re:

Case No. 13-72968 (AST)

JOHN N. KUMP,

Chapter 7

Debtor
----- X

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF SUFFOLK)s:-

Carol Smith, being duly sworn deposes that deponent is not a party to the above-captioned action, is over the age of 18 years and resides at West Islip, New York.

On January 14, 2016 deponent served the within NOTICE OF PRESENTMENT OF OBJECTION TO CLAIM/DEBTOR'S OBJECTION TO ALLOWANCE OF CLAIM upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of the same, enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

Office of the U.S. Trustee
Long Island Federal Courthouse
560 Federal Plaza
Central Islip, NY 11722

Kenneth P. Silverman, Esq.
Silverman Acampora LLP
100 Jericho Quadrangle, Suite 300
Jericho, NY 11753

Tax Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

United States Attorney's Office
Eastern District of New York
Attention: Long Island Bankruptcy Processing
610 Federal Plaza, 5th Floor
Central Islip, NY 11722-4454

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346



Carol Smith

Sworn to before me this
14th day of January, 2016

/s/ Janine M. Zarrilli

Notary Public

Janine M. Zarrilli

Notary Public, State of New York

No. 01ZA5084708

Qualified in Nassau County

Commission Expires September 8, 2017